



STATE OF INDIANA

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September 27, 2013

Ms. Lori A. Lovely
3750 N. 950 E.
Brownsburg, IN 46112

Re: Formal Complaint 13-FC-255; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Department of Mental Health and Addiction

Dear Ms. Lovely,

This advisory opinion is in response to your formal complaint alleging the Department of Mental Health and Addiction (“DMHA”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* and the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et. seq.* The DMHA has responded to your complaint through Mr. Kevin Moore, Director. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 28, 2013.

BACKGROUND

Your complaint alleges the Department of Mental Health and Addiction violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You also allege they are in violation of the Open Door Law, however, you have not indicated any circumstances that would trigger the operative portions of the ODL. As explained in the following narrative that portion of your complaint will be dismissed.

You allege that between July 30, 2013 and August 19, 2013, you were denied access to DMHA public records referencing a complaint made against one of their regulated entities. The DMHA responded on more than one occasion. It cannot be ascertained by your complaint when you filed your request for public records. Timeliness is not an issue raised in your complaint and it is determined that all responses by the agency are timely.

On August 20, 2013, the DMHA through Mr. Moore, advised you that the records you seek were not able to be released due to the confidentiality provision in Ind. Code § 12-21-5-1.5(7). You filed your formal complaint on August 28, 2013.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Department of Mental Health and Addiction is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The records request you made concerned a complaint you filed regarding Midtown Mental Health Center. An investigation was initiated by DMHA and you have indicated your concern was potentially remedied. You requested additional information regarding that investigation.

DMHA contends in their response the records cannot be disclosed due to the confidentiality provision in Ind. Code § 12-21-5-1.5(7). It provides in part:

The division shall do the following: ...Develop a confidential system to evaluate complaints and patient appeals received by the division of mental health and addiction and to take appropriate action regarding the results of an investigation. A provider is entitled to request and to have a hearing before information derived from the investigation is incorporated into the provider's profile. Information contained within the provider profile is subject to inspection and copying under IC 5-14-3-3.

This statute governs the investigation into alleged violations of mental health care providers. The materials regarding the results of the investigation are deemed confidential. The DMHA has advised this Office they no longer maintain a provider profile for inspection. It is unclear if the information you seek would be contained in the provider profile if it was maintained.

The APRA states that pursuant to Ind. Code § 5-14-3-4(a)(1) an agency is not required to release any record that is declared confidential by any other statute. The Title 12 statute that DMHA cites does just that. To the extent the records you seek are part of the confidential evaluation process of Midtown Mental Health Center, they are confidential

and a records request may be denied. See *Opinion of the Public Access Counselor 12-INF-05*.

As to your allegation DMHA violated the Open Door Law, it is the intent of the ODL the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See I.C. § 5-14-1.5-3(a).

It does not appear from your complaint or any other information submitted by either party would rise to the level of the necessity of exploring any Open Door Law issues. The lack of a specific allegation renders your complaint moot in regard to the ODL.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Department of Mental Health and Addiction has not violated the Open Door Law or the Access to Public Records Act in denying your request.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

cc: Kevin Moore, Kathy Gregory